

ESTTA Tracking number: **ESTTA204620**

Filing date: **04/14/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	FUNDACION GALA-SALVADOR DALI
Granted to Date of previous extension	04/13/2008
Address	Pujada del Castell, 28Torre Galatea FIGUERAS (GIRONA), E-17600 SPAIN

Attorney information	Paul Fields Darby & Darby PC P.O. Box 770Church Street Station New York, NY 10008-0770 UNITED STATES tmdocket@darbylaw.com, arubinstein@darbylaw.com, pfields@darbylaw.com Phone:212-527-7700
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Applicant Information

Application No	77125077	Publication date	10/16/2007
Opposition Filing Date	04/14/2008	Opposition Period Ends	04/13/2008
Applicants	Dalmacio, Mylene 9 Hodgenville Irvine, CA 92620 UNITED STATES Soriano, Jesse 9 Hodgenville Irvine, CA 92620 UNITED STATES		

Goods/Services Affected by Opposition

Class 014.

All goods and services in the class are opposed, namely: Beads for use in the manufacture of jewelry; Bracelets; Bronze jewelry; Brooches; Charms; Costume jewelry; Identification bracelets; Jewelry; Jewelry boxes; Jewelry boxes not of metal; Jewelry boxes of metal; Jewelry boxes of precious metal; Jewelry cases; Jewelry cases not of precious metal; Jewelry cases of precious metal; Jewelry caskets; Jewelry caskets of precious metal; Jewelry chains; Jewelry findings; Jewelry for the head; Jewelry pins for use on hats; Jewelry watches; Jewelry, namely, amulets; Jewelry, namely, crosses; Jewelry, namely, precious metal plated real leaves and flowers; Lapel pins; Leather jewelry and accessory boxes; Pet jewelry; Pins being jewelry; Rings being jewelry

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)
Other	15 U.S.C. Section 1052(a)- a mark which consists of or comprises matter which falsely suggests a connection with a deceased person who has granted rights in the use and commercialization of his name.

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2513220	Application Date	07/30/1999
Registration Date	11/27/2001	Foreign Priority Date	NONE
Word Mark	DALIMANIA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1999/04/20 First Use In Commerce: 1999/10/01 perfumery, namely, perfumes, [toilet waters, eaux de cologne, after shave lotions, essential oils for personal use, perfumed skin soaps, antiperspirant skin soaps, shaving soaps and shaving creams; cosmetics, namely, nail polish, hair removing creams, deodorants for personal use, sun-tanning preparations, hair shampoos and hair lotions]		

U.S. Registration No.	1478193	Application Date	05/20/1986
Registration Date	03/01/1988	Foreign Priority Date	NONE
Word Mark	SALVADOR DALI		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1983/10/00 First Use In Commerce: 1983/10/00 PERFUMES; TOILET WATERS; COLOGNES; BODY CREAM; TOILET SOAPS; DEODORANTS; BATH OILS; FOAMING BATH LOTIONS; AFTER SHAVE; AND TALCUM POWDER		

U.S. Registration No.	3182930	Application Date	06/20/2005
Registration Date	12/12/2006	Foreign Priority Date	NONE
Word Mark	SALVADOR DALI		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1983/10/00 First Use In Commerce: 1983/10/00 Perfumes; toilet waters; colognes; body cream; toilet soaps; personal deodorants; bath oils; foaming bath lotions; after shave lotion; and talcum powder		

U.S. Registration	2204768	Application Date	06/21/1996
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No.			
Registration Date	11/24/1998	Foreign Priority Date	01/25/1996
Word Mark	SALVADOR DALI		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 014. First use: [precious metals and their alloys and goods in precious metals or coated therewith not included in other classes, in particular tie clips, cuff links, pendants, cigarette cases, ashtrays and lighters in precious metals, jewelry, jewels and their imitations, precious stones, clocks and] watches, [in particular watches, small clocks, alarm clocks, parts and fittings therefor] Class 033. First use: [alcoholic beverages in particular champagnes]		

U.S. Registration No.	1594631	Application Date	10/10/1989
Registration Date	05/01/1990	Foreign Priority Date	NONE
Word Mark	DALI		
Design Mark			
Description of Mark	THE MARK CONSISTS OF THE WORD "DALI" IN STYLIZED FORM.		
Goods/Services	Class 041. First use: First Use: 1982/00/00 First Use In Commerce: 1982/00/00 MUSEUM SERVICES; EDUCATIONAL SERVICES, NAMELY CLASSES IN FINE ART		

U.S. Application No.	78677482	Application Date	07/26/2005
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	SALVADOR DALI		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: Production of motion pictures		

Attachments	73599847#TMSN.gif (1 page)(bytes) 78654409#TMSN.jpeg (1 page)(bytes) 75123268#TMSN.gif (1 page)(bytes) 73830304#TMSN.gif (1 page)(bytes) 78677482#TMSN.jpeg (1 page)(bytes) 01503459.pdf (5 pages)(22642 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Paul Fields/
Name	Paul Fields
Date	04/14/2008

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Application Ser. No. 77/125,077
Filing date: March 7, 2007
Date of Publication in the Official Gazette:
October 16, 2007

FUNDACION GALA-SALVADOR DALI,

Opposer,

v.

MYLENE DALMACIO and,
JESSE SORIANO

Applicants.

BOX TTAB - FEE

Opposition No. _____

(Serial No. 77/125,077)

NOTICE OF OPPOSITION

Fundacion Gala-Salvador Dali. (Opposer), a private foundation formed and existing under the laws of Spain, located and doing business at Pujada Castell, 28 - Torre Galatea, 1760 0; Figueras (Girona) Spain, believes it will be damaged by the registration of DALIANO as shown in Serial No. 77/125,077 (the "Application"), as applied for by Mylene Dalmacio and Jesse Soriano, (collectively referred to herein as Applicants), United States citizens, and hereby opposes registration of the same. Extensions of time to oppose the Application have been granted through April 13, 2008.

The grounds for opposition are as follows:

1. Opposer is entrusted with exercising the intellectual property rights of the renowned artist Salvador Dali, including the name and image of Mr. Salvador Dali. Opposer was granted these rights directly from the heirs of Salvador Dali.

2. Opposer is the owner, either directly or through its ownership of Demart Pro Arte B.V. of the following registrations and applications covering marks that refer to Mr. Salvador Dali (hereinafter the “DALI Marks”):

<u>MARK</u>	<u>Reg. No./Serial No.</u>	<u>Registration Date</u>
DALIMANIA	2,513,220	11/27/01
SALVADOR DALI (Stylized)	1,478,193	03/01/88
SALVADOR DALI	3,182,930	12/12/06
SALVADOR DALI	78/677,482	
SALVADOR DALI (Stylized)	2,204,768	11/24/98
DALI (stylized)	1,594,631	5/1/90

3. On March 7, 2007 Applicants filed an intent to use application for the mark DALIANO for use in connection with beads for use in the manufacture of jewelry; bracelets; bronze jewelry; brooches; charms; costume jewelry; identification bracelets; jewelry; jewelry boxes; jewelry boxes not of metal; jewelry boxes of metal; jewelry boxes of precious metal; jewelry cases; jewelry cases not of precious metal; jewelry cases of precious metal; jewelry caskets; jewelry caskets of precious metal; jewelry chains; jewelry findings; jewelry for the head; jewelry pins for use on hats; jewelry watches; jewelry, namely, amulets; jewelry, namely, crosses; jewelry, namely, precious metal plated real leaves and flowers; lapel pins; leather

jewelry and accessory boxes; pet jewelry; pins being jewelry; rings being jewelry. This application was assigned Ser. No. 77/125,077 (the "Application.").

4. Opposer's rights in the DALI Marks long pre-date the March 7, 2007 filing date of the Application, and Opposer is the successor in interest to common law rights in the name and image of Mr. Salvador Dali pre-dating any first use date alleged by Applicant.

5. Applicants' DALIANO mark incorporates in its entirety the DALI portion of Opposer's DALI marks and the surname of Mr. Salvador Dali, such that the use of the DALIANO mark is likely to cause confusion, mistake or deception with one or more of Opposer's DALI Marks and Opposer's common law rights in Mr. Salvador Dali's surname, all to Opposer's injury.

6. Upon information and belief, consumers will thus draw an association between Applicants' DALIANO mark and the famous artist, Mr. Salvador Dali.

7. Upon information and belief, Applicants' intended use of the DALIANO mark will suggest a false association with Mr. Salvador Dali and thus with Opposer as the entity authorized to exploit Mr. Dali's name and intellectual property rights, all to Opposer's injury.

8. Upon information and belief, Applicants' registration of DALIANO is likely to dilute, blur and tarnish the distinctive value of Opposer's famous DALI marks and the surname of Mr. Salvador Dali and therefore should be denied registration pursuant to 15 U.S.C. § 1043(c).

9. Registration of the DALIANO mark by Applicant is barred by the provisions of 15 U.S.C. 1052(d), for the reason that it consists of or comprises a mark which so resembles one or more of Opposer's DALI Marks and/or the DALI surname previously registered in the Patent and Trademark Office and/or previously used by Opposer (including through its predecessor in interest) and not

abandoned, as to be likely, when applied to the goods of Applicants, to cause confusion, mistake or to deceive.

10. Registration of the DALIANO mark by Applicants is barred by the provisions of 15 U.S.C. 1052(a), for the reason that it consists of or comprises matter which falsely suggests a connection with a deceased person who has granted rights in the use and commercialization of his name to Opposer.

11. For these reasons, Opposer would be damaged by the registration of Applicants' DALIANO mark shown in Application Serial No. 77/125,077.

WHEREFORE, Opposer prays that registration be refused and that this Opposition be sustained.

Pursuant to 37 C.F.R. § 2.101 Opposer has served a copy of the Notice of Opposition on the correspondent of record for Applicants identified on the USPTO's TARR database by first class mail on April 14, 2008. A copy of the certificate of service is attached.

The required fee of \$300 is being charged to Darby's American Express Card. Please charge any additional costs to our Deposit Account No. 04-0100.

Respectfully submitted,

DARBY & DARBY P.C.

Dated: New York, New York
April 14, 2008

By: /Abigail Rubinstein /
Paul Fields
Abigail Rubinstein
P.O. Box 770
Church Street Station
New York, New York 10008-0770
(212) 527-7700

Attorneys for Opposer
Fundacion Gala Salvador Dali

CERTIFICATE OF SERVICE

It is hereby certified that a true and complete copy of the foregoing NOTICE OF OPPOSITION was served by first class mail to the correspondent of record for Applicants addressed as follows:

MYLENE DALMACIO
JESSE SORIANO
THE LOCAL SPOT
9 HODGENVILLE
IRVINE, CA 92620-6210

Dated: April 14, 2008	/s/
	Abigail Rubinstein